

# Office of the Attorney General



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November 6, 2001

Director Melvin Malone  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

RECEIVED  
MELVIN MALONE

NOV 6 2001  
TN REGULATORY AUTHORITY

Re: FYI

Dear Director Malone:

Attached is a copy of a settlement agreement between the Attorney General's Office and BellSouth. Copies of this settlement will be provided to the news media today.

Please call me if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "T. Phillips".

Timothy C. Phillips  
Assistant Attorney General  
Office of the Tennessee Attorney General  
(615) 741-3533

cc: C. Howorth  
BellSouth

RECEIVED  
MELVIN MALONE

NOV 06 2001

**LATE PAYMENT CHARGE  
SETTLEMENT AGREEMENT**

TN REGULATORY AUTHORITY

This Late Payment Charge Settlement Agreement ("Agreement") is made by and between BellSouth Telecommunications, Inc. ("BellSouth") and the Tennessee Attorney General ("Attorney General") hereinafter collectively, "the Parties", this 18<sup>th</sup> day of September, 2001.

WHEREAS, BellSouth seeks approval of a tariff to charge a late payment fee on charges that are past due for services provided by BellSouth and services provided by third party interexchange carriers (the "Late Pay Tariff"); and

WHEREAS, BellSouth and the Attorney General agree as to the terms and conditions with respect to those particular circumstances in which BellSouth should be permitted to charge a late payment fee; and

WHEREAS, BellSouth intends to withdraw its present Late Pay Tariff request and submit a Revised Tariff request, incorporating many of the terms and conditions; and

WHEREAS, the Parties want to document the other terms and conditions with respect to the late payment charge which will not be included in the Revised Tariff.

THEREFORE, the Parties hereby agree as follows which controls so long as a late payment charge applies:

**PART A - DEFINITIONS**

**1. DEFINED TERMS**

- 1.1 Capitalized terms defined in this Article shall have the meanings as set forth herein. Other terms used but not defined herein will have the meanings ascribed to them in the Act or in the Rules and Regulations of the FCC or the Authority. The Parties acknowledge that other terms appear in this Agreement, which are not defined or ascribed as stated above. The Parties agree that any such terms shall be construed in accordance with their customary usage in the telecommunications industry as of the Effective Date of this Agreement.
- 1.2 "Act" means the Communications Act of 1934, as amended.
- 1.3 "Affiliate" is as defined in the Act.
- 1.4 "Authority" means the Tennessee Regulatory Authority.

- 1.5 "Effective Date" is the date referenced in the opening paragraph on page 1 of the Agreement, unless otherwise required by the Authority.
- 1.6 "Tariff" means a filing made at the state level for the provision of a telecommunications service by a telecommunications carrier that provides for the terms, conditions, and pricing of that service. Such filing may be required or voluntary and may or may not be specifically approved by the Authority. With respect to this Agreement, Tariff, unless otherwise noted, specifically refers to the tariff(s) filed in relation to the contested matter before the Authority in Docket No. 00-00041.
- 1.7 "Revised Tariff" means a filing made at the state level for the provision of a telecommunications service by a telecommunications carrier that provides for the terms, conditions, and pricing of that service. Such filing may be required or voluntary and may or may not be specifically approved by the Authority. With respect to this Agreement, Revised Tariff, unless otherwise noted, specifically refers to the tariff attached hereto as Exhibit A, titled "Proposed Late Payment Tariff."
- 1.8 The terms "Telecommunications", "Telecommunications Carrier", and "Telecommunications Services" are as defined in the Act.

## **PART B - GENERAL TERMS AND CONDITIONS**

### **2. SCOPE OF THIS AGREEMENT**

- 2.1 This Agreement specifies the rights and obligations of each party with respect to the establishment of a late payment charge by BellSouth.
- 2.2 In addition to the language specified by the Parties for the Revised Tariff, on a going forward basis BellSouth will propose and attempt to negotiate language in its billing and collection contracts stating that BellSouth may apply a late charge to past due amounts collected under such contract and encouraging the third party to give its customers notice that BellSouth's late payment charges may apply.
- a. BellSouth will provide the following notice to third parties for which it bills:

NOTICE: The Attorney General for the State of Tennessee considers it a violation of the consumer protection laws for any company to fail to clearly and conspicuously disclose to consumers the material terms of any offer, which includes your failure to disclose to your customer BellSouth's late payment charge.

- b. BellSouth also agrees to make no claim on behalf of any third party claiming exemption or any other defense under the filed rate doctrine.
- c. BellSouth will place a specific notice as the first item in the FYI section of each Tennessee customer's Bill for two bills prior to the effective date of the late payment charge and again six months after the effective date of the charge, as follows:

#### **IMPORTANT NOTICE**

**Effective (tariff effective date) BellSouth will begin applying a late payment charge to amounts that are past due. A late payment charge will also apply to charges from other companies that also appear on your BellSouth Bill.**

- d. The following notice shall be included in each new BellSouth customer's "new customer" notice prior to applying late payment charges:

#### **IMPORTANT NOTICE**

**A late payment charge will apply to amounts on your account that are past due. A late payment charge will also apply to charges that are past due for services provided by other companies, if these charges appear on your BellSouth Bill. Please see your Bill for additional information or call BellSouth at \_\_\_\_\_ if you have any questions.**

- e. There will also be a notice required for every Bill. The notice will appear beginning on the front page of every Tennessee customer's telephone Bill for as long as a late payment charge is applied and it will state as follows:

#### **IMPORTANT NOTICE(S)**

**Late Charge Reminder: An additional charge at the rate of 1.5% (for residence bills) or 3% (for business customers), as appropriate for regulated charges and at the rate as provided by your term of service for unregulated charges may apply to an unpaid balance as of (insert date).**

**If payment is received by (insert date), the amount due is \$\_\_\_\_\_.**

**If payment is received after (insert date), the amount due is \$\_\_\_\_\_, which includes applicable taxes.**

- 2.3 Late Payment Charges on Pre-paid Services. BellSouth will refrain from charging for late payments on any prepaid services, including local telephone service, except to the extent that the charges for such services remain unpaid on the following Bill date.
- 2.4 Payment Plan Options to Continue. BellSouth shall continue to generously offer payment plans to consumers such as the Credit Challenged Tariff (Sec. A2.4.1.1) and Installment Billing (Sec. A.4.2.7). These installment plans shall not include late fees unless a payment under an installment plan is past due.
- 2.5 Late Payment Charges Subject to Offset. Late payment charges will be offset in full accordance with BellSouth's Price Regulation Plan in the State of Tennessee.
- 2.6 Reporting Requirements. BellSouth will include late payment charge collection information broken down by late charges collected from residential versus business customers during the reporting period in BellSouth's Price Regulation Plan report filed annually with the Authority. The Attorney General requested a copy of this annual filing and BellSouth has agreed to provide it to the Attorney General.

### 3. RELATIONSHIP OF THIS AGREEMENT TO THE PARTIES

- 3.1 Publication, disclosure of the existence, the substance and the documentation of this Agreement, including but not limited to filing of such with the Authority, shall be at the sole discretion of the Attorney General. Notwithstanding this provision, if asked by the Authority, its Directors, or its Staff, BellSouth may state that BellSouth understands that the Attorney General will not be intervening or filing a complaint to address the Revised Tariff. Beyond this specific response and as to all additional questions, BellSouth shall in all communications, both formal and informal, direct the Authority to the Attorney General's Office for its position regarding the Late Pay Tariff and the Revised Tariff.
- 3.2 Publication, disclosure of the existence, the substance and the documentation of this Agreement, including but not limited to the submission to the Tennessee Regulatory Authority, shall be at the sole discretion of the Attorney General's Office. Notwithstanding this provision, if asked by the Authority, its Directors, or its Staff, BellSouth may state that BellSouth understands that the Attorney General will not be intervening or filing a complaint to address the Revised Tariff. Beyond this specific response and as to all additional questions, BellSouth shall in all communications, both formal and informal, direct the Authority to the Attorney General's Office for its position regarding the Late Pay Tariff and the Revised Tariff.

- 3.3 Nothing in this Agreement shall be construed to affect any private right of action that a consumer/person may hold against BellSouth. BellSouth shall retain all rights, remedies, or defenses regarding such actions that are otherwise available at law.
- 3.4 The Parties represent and warrant that the execution and delivery of this Agreement is a free and voluntary act, that this Agreement is the result of good faith negotiations, and that the parties agree that the Agreement and terms hereof are fair and reasonable. The Parties warrant that they will implement the terms of this Agreement in good faith. Further, no offer, agreements, or inducements not expressly set forth herein have been made by either party to procure this Agreement.
- 3.5 BellSouth represents that signatories to this Agreement have authority to act for and bind BellSouth.
- 3.6 Neither BellSouth nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of BellSouth.
- 3.7 Acceptance of this Agreement by the State shall not be deemed approval by the State of any of BellSouth's advertising or other business practices.
- 3.8 This Agreement may only be enforced by the Parties hereto, their respective successors and permitted assigns.
- 3.9 This document shall not be construed against the "drafter" because both Parties participated in the drafting of this document.
- 3.10 Nothing in this Agreement shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Agreement shall not bar the State, nor any governmental entity from enforcing laws, regulations or rules against BellSouth.
- 3.11 Nothing in this Agreement shall be construed as relieving BellSouth of the obligation to comply with all state and federal laws, regulations and rules.
- 3.12 BellSouth agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Agreement shall apply to BellSouth, each of its agents, assigns, representatives, partners, its subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities it controls, manages or

operates, its successors and assigns, and to other persons or entities acting directly or indirectly on its or their behalf.

#### 4. TERM AND TERMINATION

- 4.1 This Agreement shall be deemed effective upon the Effective Date. No late payment charge policy may be implemented under this Agreement before the Effective Date and approval of the Revised Tariff by the Tennessee Regulatory Authority.
- 4.2 Except as provided herein, BellSouth and the Attorney General agree this Agreement continues for a period from the Effective Date through the date BellSouth ceases to impose a late payment charge or until such time as modified by subsequent written agreement.
- 4.3 In the event of either Party's breach of any of the terms or conditions hereof, the non-defaulting Party may immediately terminate this Agreement in whole or in part.
- 4.4 Termination of this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect to any act or omission prior to termination or from any obligation which is expressly stated herein to survive termination.

#### 5. CONSIDERATION

- 5.1 In consideration for the Attorney General not intervening, filing a complaint or joining in such filed by any other party which attempts to prevent BellSouth from enjoying the fruits outlined in the "Revised Tariff" to be attached to the agreement and submitted for approval to the TRA, BellSouth agrees to be bound by the terms and conditions contained herein. Each of the Parties agree to perform its respective obligations herein in consideration of the mutual promises contained herein.

#### 6. REMEDIES

- 6.1 Except as otherwise provided herein, all rights of termination, cancellation, or other remedies prescribed in this Agreement, or otherwise available, are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled in case of any breach or threatened breach by the other Party of any provision of this Agreement, and use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing the provisions

of this Agreement.

7. **ASSIGNMENTS AND SUBCONTRACT**

- 7.1 If any Affiliate of either Party succeeds to that portion of the business of such Party that is responsible for, or entitled to, any rights, obligations, duties, or other interests under this Agreement, such Affiliate may succeed to those rights, obligations, duties, and interests of such Party under this Agreement. In the event of any such succession hereunder, the successor shall expressly undertake in writing to the other Party the performance and liability for those obligations and duties as to which is succeeding a Party to this Agreement. Thereafter, the original party shall be relieved of such obligations and duties, except for matters out of events occurring prior to the date of such undertaking.
- 7.2 Except as provided in section 7.1, any assignment of this Agreement or of the work to be performed, in whole or in part, or of any other interest of a Party hereunder, without the other Party's written consent, which consent shall not be unreasonably withheld or delayed, shall be void.

8. **GOVERNING LAW**

- 8.1 This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Tennessee.

9. **NOTICES**

- 9.1 Except as otherwise provided herein, all notices or other communication hereunder shall be given by personal delivery, facsimile, courier, overnight mail, certified mail, postage prepaid, returned receipt requested to the following addressees:

**If to BellSouth:**  
Charles L. Howorth, Jr.  
Regulatory Vice President  
BellSouth Telecommunications, Inc.  
Suite 2104  
333 Commerce Street  
Nashville, TN 37201-3300



**If to the Attorney General:**

Paul G. Summers  
Tennessee Attorney General  
Office of the Attorney General  
P.O. Box 20207  
Nashville, Tennessee 37202

**With a Copy to:**

Cynthia E. Kinser  
Deputy Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, TN 37202

Street Address: 425 Fifth Avenue North, 2nd Floor  
Nashville, Tennessee 37243-0491

- 9.2 If delivery, other than certified mail, return receipt requested, is used to give notice, a receipt of such delivery shall be obtained and the notice shall be effective when received. If delivery via certified mail, return receipt requested, is used, notice shall be effective when sent. The address to which notices or communications may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Article 9.

**10. WAIVERS**

- 10.1 No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and properly executed on behalf of the Party against whom such waiver or consent is claimed.
- 10.2 No course of dealing or failure of any party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.
- 10.3 Waiver by either Party or any default by the other Party shall not be deemed a waiver of any other default.
- 10.4 Any failure by any party to this Agreement to insist upon the strict performance by any other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the

specific performance of any and all of the provisions of this Agreement.

**11. AMENDMENTS AND MODIFICATIONS**

11.1 No provision of this Agreement shall be deemed waived, amended or modified by either party unless such a waiver, amendment or modification is in writing, dated, and signed by both Parties, and then only to the extent set forth in such written waiver, modification or amendment.

**12. SEVERABILITY**

12.1 If any part of this Agreement becomes or is held to be invalid for any reason, such invalidity will affect only the portion of this Agreement which is invalid. In all other respects this Agreement will stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

**13. HEADINGS NOT CONTROLLING**

13.1 The headings and numbering of Articles, Sections, Parts and Attachments in this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

**14. ENTIRE AGREEMENT**

14.1 This Agreement, including all Parts and Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

**15. COUNTERPARTS**

15.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

**16. SUCCESSORS AND ASSIGNS**

16.1 This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be executed by its duly authorized representatives.

BellSouth Telecommunications, Inc.

Office of the Attorney General  
Tennessee Attorney General

By: Charlie Howorth

By: Paul G. Summers

Name: Charles L. Howorth, Jr.

Name: Paul G. Summers

Title: Regulatory Vice - President

Title: Tennessee Attorney General

Date: Sept. 12, 2001

Date: 9/18/01

::ODMA\GRPWISE\sd05.IC01S01.JSB1:48538.1

## PROPOSED LATE PAYMENT TARIFF

A late payment charge of two percent (2%) for residence customers (limited to one and one half percent (1.5%) for the first year following the effective date of this charge) and up to three percent (3%) for business customers may be charged for BellSouth regulated services. A late payment charge of up to two percent (2%) for residence customers [limited to one and one half percent (1.5%) for the first year following the effective date of this charge] and up to three percent (3%) for business customers may be applied to charges for regulated services provided by a third party, provided: (a) BellSouth has given notice to customers; or (b) the contract between the customer and the particular third party provides for the late fee; or (c) a valid tariff exists permitting the particular third party to charge the late fee. A different late fee may apply to charges for unregulated services at the rate as provided by the terms of service for these unregulated services, but not to exceed the rate for regulated service. Late payment charges will be applied to the unpaid balance of each subscriber's bill (including amounts billed in accordance with the Company's Billing and Collections Tariff) when the previous month's bill has not been paid in full prior to the next billing date. Nonpayment of a late payment charge shall not be the sole cause for denial or termination of a customer's local exchange service. This late payment charge will not apply to:

1. Lifeline customers;
2. Specific charges disputed or contested by the customer, including any applicable taxes, fees or charges directly related to the disputed amount;
3. Charges for prepaid services, except to the extent that the charges for such services remain unpaid on the following bill date;
4. Charges for which the customer has had less than 21 days to pay (subject to notification by the customer); and
5. Previous unpaid late payment charges.

Charges for payments that are overdue on state government accounts will be applied consistent with the applicable state statutes.<sup>1</sup>

Note 1: The Company will begin applying the charges set forth in this section with normal billing cycles starting on (insert date).